

Introduced by Senator Florez

February 17, 2005

An act to amend Sections 115880 and 115885 of, and to add Article 1.5 (commencing with Section 115860) to Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 429, as introduced, Florez. Recreational bathing: sanitation.

(1) Existing law provides that it is the policy of the state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and safety. Existing law requires that all water supply reservoirs of a public agency shall be open for recreational use by the people of the state, subject to the regulations of the State Department of Health Services. Existing law prohibits recreational uses involving bodily contact with water by any participant, with respect to a reservoir in which water is stored for domestic use, except under specified circumstances.

This bill would require the department, by March 1, 2006, to convene a public advisory group to advise the department on the development of minimum standards for sanitation of high-use or priority freshwater bathing areas, as defined. The bill would require the department, by December 31, 2008, to establish minimum sanitation standards for the recreational use of the public freshwater bathing areas. The bill would impose various duties on the department and local health officers and environmental health directors in this regard, thereby imposing a state-mandated local program, but would provide that the duties of a local public officer or agency shall only be mandatory during a fiscal year in which the Legislature has appropriated sufficient funds for those purposes.

This bill would provide that if sufficient funds are not appropriated and local agencies do not comply with any duty imposed pursuant to these provisions, the local agency shall notify the public by posting a notice to that effect at the public beach.

(2) Existing law requires the department to establish minimum standards for the sanitation of public beaches. Existing law requires the health officer with jurisdiction over the area in which a public beach is created to inspect the public beach to determine compliance with these standards. Under existing law, any duty imposed upon a local public officer or agency pursuant to these provisions is only mandatory during a fiscal year in which the Legislature has appropriated sufficient funds therefor.

This bill would provide that if sufficient funds are not appropriated and local agencies do not comply with any duty imposed pursuant to the above provisions, the local agency shall notify the public by posting a notice to that effect at the public beach, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.5 (commencing with Section 115860)
2 is added to Chapter 5 of Part 10 of Division 104 of the Health
3 and Safety Code, to read:

4
5 Article 1.5. Public Freshwater Bathing Areas
6

7 115860. (a) By March 1, 2006, the department shall convene
8 a public advisory group consisting of representatives of local
9 environmental health officers, water agencies, state and local
10 recreation providers, recreation user groups, recreation-oriented

1 businesses, and public interest groups, to advise the department
2 on the development of minimum standards for sanitation of
3 high-use or priority freshwater bathing areas and to make
4 recommendations regarding development of the regulations
5 required by subdivision (b).

6 (b) By December 31, 2008, the department shall, by
7 regulation, and taking into consideration the recommendations of
8 the public advisory group, establish minimum standards for the
9 sanitation of public freshwater bathing areas, as the department
10 determines are reasonably necessary for the protection of the
11 public health and safety.

12 (c) For purposes of this article, a “public freshwater bathing
13 area” means a public recreation area located on a freshwater,
14 brackish, or estuarine body of water at which a federal, state, or
15 local agency maintains recreational facilities for public use, and
16 at which bodily contact recreation is not prohibited.

17 (d) For purposes of this article, a “high-use or priority public
18 freshwater bathing area” means a public freshwater bathing area
19 that meets any of the following conditions, as determined and
20 posted by the local health officer or environmental health
21 director, or the department:

22 (1) Meets or exceeds high-use density criteria established in
23 regulations adopted by the department pursuant to this section.

24 (2) Is listed as an impaired water body pursuant to 33 U.S.C.
25 Sec. 1313(d)(1)(A) in the federal Clean Water Act, as a result of
26 bacterial contamination and consequent nonattainment of the
27 recreational beneficial use.

28 (3) Is determined by the local health officer or environmental
29 health director, or by the department, to pose a potential health
30 risk to a significant number of people.

31 (e) At a minimum, the regulations shall do all of the following:

32 (1) Require the testing of the waters in all high-use or priority
33 public freshwater bathing areas for microbiological contaminants
34 established pursuant to subparagraph (3), which may include
35 total coliform, fecal coliform, and enterococci bacteria. Testing
36 shall be conducted on at least a weekly basis, from April 1 to
37 October 31, inclusive, of each year, beginning in 2009.

38 (2) Establish criteria for determining high-use and priority
39 bathing densities.

(3) Establish protective minimum standards for microbiological indicators that the department determines are appropriate for testing pursuant to paragraph (1). In establishing these standards, the department shall consult with the State Water Resources Control Board to avoid inconsistency with water quality control plans and shall also consider the United States Environmental Protection Agency ambient water quality criteria for bacteria.

(4) Establish protocols for both of the following:

(A) Determining monitoring site locations and monitoring frequency based on risks to public health.

(B) Making decisions regarding public notification of health hazards, including, but not limited to, the posting, closing, and reopening of public freshwater bathing areas.

(5) Provide that the monitoring frequency and locations established pursuant to this subdivision may only be reduced or altered in accordance with procedures established in the related regulations.

(f) The local health officer or environmental health director shall be responsible for testing the waters adjacent to, and for coordinating the testing of, all public freshwater bathing areas within his or her jurisdiction.

(g) The local health officer or environmental health director may meet the testing requirements of this section by utilizing test results from other agencies conducting microbiological contamination testing of the waters under his or her jurisdiction.

(h) Any city or county or city and county may adopt standards for the sanitation of freshwater bathing areas within its jurisdiction in which bodily contact with the water is not prohibited, that are stricter than the standards adopted by the department pursuant to this section.

(i) (1) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the Director of Health Services, in the annual Budget Act or other statute, for local agencies to cover the costs to those agencies associated with the performance of these duties. The Director of Health Services shall annually file, within 15 days after enactment of the Budget Act, a written statement with the Secretary of the Senate and with the Chief Clerk of the

1 Assembly, memorializing whether sufficient funds have been
2 appropriated.

3 (2) If sufficient funds are not appropriated and local agencies
4 do not comply with any duty imposed upon a local public officer
5 or agency pursuant to this section, the local agency shall notify
6 the public by posting notice at the public freshwater bathing area
7 that the local agency is not complying with that duty.

8 115861. (a) The local health officer or environmental health
9 director having jurisdiction over the area in which a public
10 freshwater bathing area is located shall do all of the following:

11 (1) Determine compliance with the standards established
12 pursuant to Section 115860. If the local health officer or
13 environmental health director determines that the standards are
14 not being met, he or she may restrict the use of, or close, the
15 public freshwater bathing area until compliance with the
16 standards occurs.

17 (2) (A) Investigate any complaint of person of a
18 noncompliance with standards established pursuant to Section
19 115860. If the local health officer or environmental health
20 director determines that the standards prescribed by the
21 department are not being met, he or she may restrict the use of, or
22 close, the public freshwater bathing area until compliance with
23 the standards occurs.

24 (B) If the person who made the complaint is not satisfied with
25 the action taken by the local health officer or environmental
26 health director, he or she may report the alleged violation to the
27 department. If a violation is reported to the department, the local
28 health officer or environmental health director shall provide a
29 report to the department supporting the local decision. The
30 department shall review the report and may either uphold or
31 overrule the decision or part of the decision, and make its own
32 order regarding restriction or closure of the public freshwater
33 bathing area.

34 (3) Inform any agency responsible for the operation and
35 maintenance of the public freshwater bathing area within 24
36 hours, whenever a public freshwater bathing area is posted,
37 closed, or otherwise restricted.

38 (4) Report any violation of the regulations relating to posting,
39 closure, or other restrictions established pursuant to Section
40 115860, and determined by the local health officer or

1 environmental health director, to the district attorney, or, if the
2 violation occurred in a city and the city attorney is authorized to
3 prosecute misdemeanors pursuant to Section 41803.5 of the
4 Government Code, to the city attorney.

5 (b) (1) Any duty imposed upon a local public officer or local
6 agency pursuant to this section shall be mandatory only during a
7 fiscal year in which the Legislature has appropriated sufficient
8 funds, as determined by the Director of Health Services, in the
9 annual Budget Act or other statute, for local agencies to cover the
10 costs to those agencies associated with the performance of these
11 duties. The director shall annually, within 15 days after
12 enactment of the Budget Act, file a written statement with the
13 Secretary of the Senate and with the Chief Clerk of the Assembly
14 memorializing whether sufficient funds have been appropriated
15 for these purposes.

16 (2) If sufficient funds are not appropriated and local agencies
17 do not comply with any duty imposed upon a local public officer
18 or agency pursuant to this section, the local agency shall notify
19 the public by posting notice at the public freshwater bathing area
20 that the local agency is not complying with that duty.

21 SEC. 2. Section 115880 of the Health and Safety Code is
22 amended to read:

23 115880. (a) The department—~~shall by regulation~~, in
24 consultation with local health officers and the public, *shall adopt*
25 *regulations* to establish minimum standards for the sanitation of
26 public beaches, including, but not limited to, the removal of
27 refuse, as it determines—~~are~~ *is* reasonably necessary for the
28 protection of the public health and safety.

29 (b) Prior to final adoption by the department, the regulations
30 and standards required by this section shall undergo an external
31 comprehensive review process similar to the process set forth in
32 Section 57004 of the Health and Safety Code.

33 (c) The regulations shall, at a minimum, do all of the
34 following, by December 31, 1998:

35 (1) Require the testing of the waters adjacent to all public
36 beaches for microbiological contaminants, including, but not
37 limited to, total coliform, fecal coliform, and enterococci
38 bacteria. The department may require the testing of waters
39 adjacent to all public beaches for microbiological indicators other
40 than those set forth in this paragraph, or a subset of those set

1 forth in this paragraph, if the department affirmatively
2 establishes, based on the best available scientific studies and the
3 weight of the evidence, that the alternative indicators are as
4 protective of the public health.

5 (2) Establish protective minimum standards for total coliform,
6 fecal coliform, and enterococci bacteria, or for other
7 microbiological indicators that the department determines are
8 appropriate for testing pursuant to paragraph (1).

9 (3) Establish protocols for all of the following:

10 (A) Determining monitoring site locations and monitoring
11 frequency based on risks to public health.

12 (B) Making decisions regarding public notification of health
13 hazards, including, but not limited to the posting, closing, and
14 reopening of public beaches.

15 (4) Require that the waters adjacent to public beaches be tested
16 for total coliform, fecal coliform, and enterococci bacteria, or for
17 other microbiological indicators that the department determines
18 are appropriate for testing pursuant to paragraph (1). Except as
19 set forth in paragraph (5), testing shall be conducted on at least a
20 weekly basis, from April 1 to October 31, inclusive, of each year,
21 beginning in 1999, if all of the following apply:

22 (A) The beach is visited by more than 50,000 people annually.

23 (B) The beach is located on an area adjacent to a storm drain
24 that flows in the summer.

25 (5) ~~The~~ *Provide that the* monitoring frequency and locations
26 established pursuant to this subdivision and related regulations
27 may only be reduced or altered after the testing required pursuant
28 to paragraph (4) reveals levels of microbiological contaminants
29 that do not exceed for a period of two years the minimum
30 protective standards established pursuant to paragraph (2).

31 (d) The local health officer shall be responsible for testing the
32 waters adjacent to, and coordinating the testing of, all public
33 beaches within his or her jurisdiction.

34 (e) The local health officer may meet the testing requirements
35 of this section by utilizing test results from other agencies
36 conducting microbiological contamination testing of the waters
37 under his or her jurisdiction.

38 (f) Any city or county *or city and county* may adopt standards
39 for the sanitation of public beaches within its jurisdiction that are

1 stricter than the standards adopted by the state department
2 pursuant to this section.

3 (g) (1) Any duty imposed upon a local public officer or
4 agency pursuant to this section shall be mandatory only during a
5 fiscal year in which the Legislature has appropriated sufficient
6 funds, as determined by the State Director of Health Services, in
7 the annual Budget Act or otherwise for local agencies to cover
8 the costs to those agencies associated with the performance of
9 these duties. The State Director of Health Services shall annually,
10 within 15 days after enactment of the Budget Act, file a written
11 statement with the Secretary of the Senate and with the Chief
12 Clerk of the Assembly memorializing whether sufficient funds
13 have been appropriated.

14 (2) *If sufficient funds are not appropriated and local agencies*
15 *do not comply with any duty imposed upon a local public officer*
16 *or agency pursuant to this section, the local agency shall notify*
17 *the public by posting a notice at the public beach that the local*
18 *agency is not complying with that duty.*

19 SEC. 3. Section 115885 of the Health and Safety Code is
20 amended to read:

21 115885. The health officer having jurisdiction over the area in
22 which a public beach is created shall *do all of the following*:

23 (a) Inspect the public beach to determine whether the
24 standards established pursuant to Section 115880 are being
25 complied with. If the health officer finds any violation of the
26 standards, he or she may restrict the use of, or close, the public
27 beach or portion thereof in which the violation occurs until the
28 standard is complied with.

29 (b) Investigate any complaint of a person of a violation of any
30 standard established by the department pursuant to Section
31 115880. If the health officer finds any violation of the standards
32 prescribed by the department, he or she may restrict the use of, or
33 close, the public beach or portion thereof until the standard is
34 complied with. If the person who made the complaint is not
35 satisfied with the action taken by the health officer, he or she
36 may report the violation to the department. The department shall
37 investigate the reported violation, and, if it finds that the
38 violation exists, it may restrict the use of or close the public
39 beach or portion thereof until the standard violated is complied
40 with.

(c) (1) Whenever a beach is posted, closed, or otherwise restricted in accordance with Section 115915, the health officer shall inform the agency responsible for the operation and maintenance of the public beach within 24 hours of the posting, closure, or restriction.

(2) The health officer shall establish a telephone hotline to inform the public of all beaches currently closed, posted, or otherwise restricted. The hotline shall be updated as needed in order to convey changes in public health risks.

(d) Report any violation of the standards established pursuant to Section 115880 to the district attorney, or if the violation occurred in a city and, pursuant to Section 41803.5 of the Government Code, the city attorney is authorized to prosecute misdemeanors, to the city attorney.

(e) In the event of a known untreated sewage release, the local health officer shall immediately test the waters adjacent to the public beach and to take action pursuant to regulations established under Section 115880.

(f) Notwithstanding any other provision of law, in the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the local health officer shall immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards established pursuant to Section 115880.

(g) (1) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

(2) *If sufficient funds are not appropriated and local agencies do not comply with any duty imposed upon a local public officer or agency pursuant to this section, the local agency shall notify*

1 *the public by posting a notice at the public beach that the local*
2 *agency is not complying with that duty.*

3 SEC. 4. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.